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UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1988

Addendum

YUGOSLAVIA*

[10 March 1992]

I

1. The Socialist Federal Republic of Yugoslavia, in accordance with the obligations undertaken by its ratification of the International Covenant on Civil and Political Rights and in conformity with the principles contained in the Charter of the United Nations, continued during the reporting period activities aimed at the implementation of the adopted measures providing for the exercise of the rights recognized by the Covenant, namely, the re-examination, revision and adoption of new measures in the national legislation with a view to promoting the rights and freedoms of man and citizen and ensuring their protection in accordance with internationally recognized standards.

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* For the initial report submitted by the Government of Yugoslavia, see document CCPR/C/1/Add.23 and for its consideration see CCPR/C/SR.98-SR.99 and SR.102, or Official Records of the General Assembly, Thirty-third session, Supplement No. 40 (A/33/40), paras. 366-398. For the second periodic report of Yugoslavia, see document CCPR/C/28/Add.1 and for its consideration by the Committee, see CCPR/C/SR.483, SR.484 and SR.488, or Official Records of the General Assembly, Thirty-ninth session, Supplement No. 40 (A/39/40), paras. 193-238.

2. At the same time, during the reporting period the ineffective socio-economic and political system in the Socialist Federal Republic of Yugoslavia, under the influence of global trends, in particular the reform process in the East European countries, entered a period of crisis. The old system, based on the non-ownership concept of property, lack of market and market mechanisms, weak economic structure ill-adapted to modern processes, one-party system of rule and more or less powerful impact of the State, called for changes through radical interventions to enable the creation of a new system based on economic efficiency, political pluralism, rule of law and rights and freedoms of citizens.

3. To that end a process of reforms was initiated and intensified on the basis of the amendments to the Constitution of Yugoslavia in November 1988, through which the concept of the so-called agreement-based economy was abandoned and a process of transition to a market economy inaugurated, bringing about changes in the distribution of social power. However, even in the process of adopting those changes, it was considered that their scope would be limited and that the constitutional-legal framework and corresponding federal legislation would remain a limiting factor and an obstacle in furthering the process of change in society.

4. The Federal Executive Council, at the end of 1989 and beginning of 1990, proposed new constitutional changes which were aimed at creating changes in the economic life of the country and, while ensuring uniformity at the national level, at creating preconditions for undertaking changes in the political system, especially by introducing political pluralism, calling of multiparty elections and attaining internationally recognized standards in the field of the protection and realization of the acknowledged freedoms and rights of citizens.

5. To this end, amendment LVII proposes the following:

(a) Broadening of guarantees and equality of citizens, implying the broadening of the principle of the equality of citizens regardless of their political or other convictions, social origin and birth or other personal characteristics;

(b) Possibility of pronouncing a sentence of capital punishment only in a state of war or immediate danger of war;

(c) The absolute prohibition of torture or cruel, inhuman or humiliating punishment or treatment of offenders and prohibition of medical or scientific experiments without the consent of the person in question;

(d) Limiting through adequate laws the possibilities for violating the privacy of letters and other means of communication by requiring a court decision for the violation of this right;

(e) The introduction of a new constitutional law on the freedom of consciences;

(f) The regulation by law of the collection and processing of data and its use;

(g) The provision of social security through compulsory insurance in accordance with the law;

(h) The provision of absolute freedom of trade union organization and freedom of political organization and activity.

This amendment thus expands the rights and freedoms of citizens and guarantees privacy, freedom of conscience and religious belief, and freedom of political and trade union organization and activity, and provides protection of the physical and moral integrity of individuals in accordance with contemporary achievements and internationally recognized standards.

6. However, the complexity of the process and the length of time needed to change the Constitution of the Social Federal Republic of Yugoslavia, linked with the refusal of the federal units to give their consent to amending the Constitution, led to a constitutional-legal crisis which halted the process of the re-examination, further development and promotion of the rights and freedoms of citizens in conformity with internationally recognized standards. A blockade therefore exists at present in Yugoslavia with respect to the further development of the constitutional-legal system at the federal level and which has an impact on the level of protection and promotion by the legal system of the rights and freedoms of citizens. It is no longer possible to propose solutions according to a democratic procedure and within the institutions of the system which would be directed towards establishing priority of international over national law, defining the respective spheres of competence of the federal bodies and those of the federal units in the realization of international obligations; further coordination of legal regulations within the concept of a legal State with the function of ensuring adequate protection of the constitutionally guaranteed rights of man; the setting up of new institutions of protection which would be more accessible to the citizens.

7. In addition, parallel with the proposed changes to the Constitution was the process of the further development of the constitutional-legal system in the federal units. In some of the republics, the changes coincided with the proposed amendments to the Constitution while in others procedures were initiated for promulgating constitutions which would regulate in a more integral manner the fundamental rights and freedoms of citizens in those republics. Accordingly, the new republican constitutions regulate in a more integral way the corpus of the rights of man and citizen than was the case in the Constitution of the Socialist Federal Republic of Yugoslavia, which was based entirely on the model of the European Convention on Human Rights. In some of the republican constitutions priority is given to international law in relation to national law and capital punishment is abolished. These activities and changes are in line with general international trends in this field although they are not fully in conformity with national legislation. On the other hand, the adoption of new constitutions or amendments to the

constitutions implies the acceptance of solutions which unilaterally change the existing relations within the federation.

8. Such actions brought about ethnic tensions, the creation of a political-legal crisis, the strengthening of nationalist totalitarianism and inter-ethnic conflicts which all threaten and put at stake the further promotion of the rights and freedoms of citizens as well as the fulfilment of internationally recognized obligations on the part of the Socialist Federal Republic of Yugoslavia in this field. Some of the proposed and adopted solutions in the legal systems of certain republics allow for the possibility of repression and protection, discrimination and privileges, depending on ethnic, religious or political affiliation, a matter which will be dwelt upon further.

9. The above-mentioned facts, as well as the lack of adequate systemic solutions for providing, in the procedure of implementing guaranteed rights and freedoms of citizens, effective protection at the federal level, imply the existence of a serious threat to the achieved level and further promotion of the rights and freedoms of citizens and brings into question the rights achieved to date.

II

10. The 1977 report of the Socialist Federal Republic of Yugoslavia contained an integral review of the legislative system and level of its incorporation in the internal legal system, as well as a review of the rights of man recognized by the International Covenant on Civil and Political Rights. Taking this into consideration, we shall dwell upon and review the changes in the legislative field and their scope in the implementation of the rights recognized by the Covenant in comparison with the situation described in the 1977 and 1983 reports.

1. Article 1

11. The fundamental principles of the Constitution of the Socialist Federal Republic of Yugoslavia stipulate the right of every nation to self-determination, including the right to secession (section I) and the right of each nation freely to determine and construct its own social and political system by whatever ways and means it may choose (section VII). In the subsequent text of the Constitution, above all in the normative part, the provisions on the right to self-determination are not elaborated in detail.

12. These rights are also regulated by the International Covenant on Civil and Political Rights and by the provisions of other international treaties which govern this matter and which have become, on the basis of ratification, an integral part of the legal order of the country.

13. Bearing in mind the above mentioned, as well as the fact that all nations have the right to self-determination, which is not disputable in the Socialist Federal Republic of Yugoslavia, we wish to draw the attention of the

Committee to some of the stands and action taken in connection with this right which are of relevance to the level and scope of protection of other rights recognized by the Covenant.

14. Taking into consideration that the redistribution of competences between the federation and the federal units has shifted in favour of the federal units, a legal system has come into existence in Yugoslavia under the influence of the redistribution of power which enabled the federal units to behave as completely sovereign States and subjects of international law. Therefore, the respective leadership of the federal units, elected through multiparty elections and relying on the internationally recognized right of nations to self-determination, has initiated a process of negotiations and decision-making on whether their people will remain in an association with other Yugoslav peoples.

15. Proceeding from the assertion of the sovereignty of the federal units, a stand on the priority of the republican constitutions and legal system over the federal has been conceived. This stand resulted in the amending of the constitutions of the federal units which formally established them as sovereign States, and on the same basis the adoption of a number of unilateral legal acts which were aimed at realizing the rights of nations to self-determination in a way implying the regulation of mutual relations in the Socialist Federal Republic of Yugoslavia along new lines and its changed internationally recognized status and personality.

16. Accordingly, the Assembly of Slovenia has:

(a) Adopted amendments IX-XC in the framework of which the provisions of item 3, paragraph 3 of amendment LXVII stipulate that the Republic of Slovenia shall regulate matters and procedures linked to the realization of the right to self-determination, while the provisions of article 4, paragraph 1 of amendment LXXII prescribe that the chambers of the Assembly of Slovenia shall regulate at joint sessions all issues and procedures linked to the realization of the right to self-determination;

(b) Adopted the Declaration on the Regulation of Relations relevant to the Republic of Slovenia and the Declaration on the Sovereignty of the State of the Republic of Slovenia which contain express provisions concerning the priority of the republican constitution and laws over the federal ones;

(c) Proclaimed amendments XCI-XCV which provide for the further building up of the political system;

(d) Proclaimed amendments XCVI-XCVIII. Item 1 of amendment XCVI stipulates that the provisions of the Constitution of the Socialist Federal Republic of Yugoslavia which are not in line with the Constitution of the Republic of Slovenia shall not be applied in the Republic of Slovenia. Item 2 of the same amendment stipulates that the Assembly of the Republic of Slovenia shall decide on the application of federal laws adopted prior to the adoption of the amendments, while item 3 stipulates that the federal laws brought after

the proclamation of the amendments shall be applied only if their implementation is approved by the Assembly of the Republic of Slovenia;

(e) Passed the Law on the Plebiscite on the Autonomy and Independence of the Republic of Slovenia, whose article 1 stipulates that on the basis of the inalienable right of the Slovenian people to self-determination in the Republic of Slovenia, a plebiscite should be held concerning whether the Republic of Slovenia should become an autonomous and independent State. Article 4 stipulates that a decision brought by the plebiscite to the effect that the Republic of Slovenia is to become an autonomous and independent State shall oblige the Assembly of the Republic of Slovenia to adopt constitutional and other acts and measures required for taking over the realization of the sovereign rights which had previously been transferred to the bodies of the Socialist Federal Republic of Yugoslavia. Article 10 of the Law stipulates that in case a decision is brought on the establishment of the Republic of Slovenia as an autonomous and independent State, that decision shall be proclaimed and a programme adopted for its implementation;

(f) Proclaimed amendments to the constitutional law on the implementation of amendments XCVI and IX-LXXXIX to the Constitution of the Republic of Slovenia which suspend the provisions of the federal laws;

(g) Proclaimed constitutional amendments to the Constitution of the Republic of Slovenia. These changes, within the framework of amendment XCIX, item 1, stipulate that the citizens of the Republic of Slovenia shall, directly and through the representatives in the Assembly of the Republic of Slovenia, decide on the regulation of all relations in the Republic of Slovenia, as well as on the regulation of relations of the Republic of Slovenia with other States in international organizations. Item 2 stipulates that the Republic of Slovenia shall regulate its relations with other States and international organizations in accordance with international law and, as one of the legal successors of the Socialist Federal Republic of Yugoslavia, in conformity with the international agreements of which the Socialist Federal Republic of Yugoslavia is a signatory. Item 3 abolishes all the provisions of the Constitution of the Republic of Slovenia which transfer the exercise of sovereign rights of the Republic of Slovenia to the bodies of the Socialist Federal Republic of Yugoslavia, as well as the provisions which regulate the status of the Republic of Slovenia in the Socialist Federal Republic of Yugoslavia and its relations thereof. Item 5 stipulates that until the Assembly of the Republic of Slovenia decides otherwise, the Republic of Slovenia shall regulate the relations with other subjects within the framework of the regulations applied in the Republic of Slovenia in accordance with constitutional amendment XCVI to the Constitution of the Republic of Slovenia;

(h) Adopted a resolution on the proposal for the negotiated disassociation from Yugoslavia which was brought proceeding from the right to self-determination and the results of the plebiscite on the independence and autonomy of the Republic of Slovenia of 23 December 1990.

17. The Assembly of Croatia has:

(a) Declared the Constitution of the Republic of Croatia. Through this Constitution a full revision of the constitutional-legal system of the Republic was carried out. In accordance with this Constitution, the Republic of Croatia has declared itself a completely independent and sovereign State. Among other things resulting from such an option is the fact that a large number of solutions in the Constitution of the Republic of Croatia which pertain to the status of the Republic, the rights and obligations of the Republic and the competences of the republican bodies are not consistent with the status of the republics established by the Constitution of the Socialist Federal Republic of Yugoslavia and with established relations in the federation. These solutions apply to the regulation of the status and sovereignty of the Republic of Croatia and to the rights and obligations of the Republic and its bodies, in particular the President of the Republic. In addition, mention should be made of article 140 of the Constitution, according to which the Republic of Croatia remains within the Socialist Federal Republic of Yugoslavia until a new agreement between the Yugoslav republics is reached or until the Assembly of the Republic of Croatia decides otherwise; the provisions of paragraph 2 of article 140 of the Constitution of the Republic of Croatia which stipulates that, if an act or measure taken by a federation body or a body of another republic or province violates the territorial integrity of the Republic of Croatia, or if the latter is placed in an inequitable position in the federation or if its interests are threatened, the republican authorities shall take the required decision, on the basis of the right to self-determination, for the protection of the sovereignty and interests of the Republic of Croatia; the provisions of article 139 of the Constitution which stipulate the right to association, namely the secession of the Republic of Croatia, and procedures for implementing that right;

(b) Passed the constitutional law on amending the constitutional law for implementing the Constitution of the Republic of Croatia which stipulates that the provisions of the Constitution of the Socialist Federal Republic of Yugoslavia, federal laws and other regulations contrary to the Constitution, namely the laws in force in the Republic of Croatia, shall not be applied in the Republic of Croatia and that the federal bodies cannot, without the prior consent of the Assembly of Croatia or the President of the Republic, proclaim a state of emergency or order the use of armed forces in peace; that the Republic of Croatia shall establish those federal laws, other regulations and acts, as well as actions and procedures of the federal authorities, which shall not be applied in the Republic of Croatia if they violate the territorial integrity of the Republic of Croatia, if they place it in an inequitable position in the federation or if they threaten its sovereignty and interests;

(c) Adopted a resolution on accepting the procedure for disassociation from the Socialist Federal Republic of Yugoslavia and possible association in a union of sovereign republics;

(d) Adopted the constitutional decision on the sovereignty and autonomy of the Republic of Croatia which, among other things, proclaims it as a sovereign and autonomous State and thereby initiates the procedure of disassociation from the other republics and the Socialist Federal Republic of Yugoslavia, and the procedure for international recognition.

18. The Assembly of the Republic of Serbia has proclaimed the Constitution of the Republic of Serbia which completely changes the constitutional-legal system of the Socialist Republic of Serbia. According to the Constitution, Serbia has actually become a fully independent and sovereign State. In that regard, mention should be made of the provisions of article 135 of the Constitution which regulate the relations with the Constitution of the Socialist Federal Republic of Yugoslavia, and in particular item 2 of the same article which establishes that in cases where the acts of the federal bodies or of the authorities of the other republics violate the equality of the Republic of Serbia or in some other way threaten her interests without providing compensation, the republican bodies shall take action to protect the interests of the Republic of Serbia.

19. The Assembly of the Republic of Macedonia has passed the Declaration on the Sovereignty of the Socialist Republic of Macedonia in which, among other things, article 1 establishes the sovereignty of the Republic in conformity with the constitutional options on the independence and territorial integrity of the Macedonian State as well as the right of the Macedonian people to self-determination, including the right to secession. Article 2 of the Declaration establishes the priority of republican over federal laws, stipulating that the Constitution and federal laws shall be applied on the territory of the Socialist Republic of Macedonia only if they are not contrary to the Constitution, laws and decisions of the Assembly of Macedonia which establish the sovereignty of the Socialist Republic of Macedonia.

20. Proceeding from the right of nations to self-determination, which includes the right to secession, the following should be borne in mind:

(a) The provisions of the basic principles of the Constitution of the Socialist Federal Republic of Yugoslavia and the provisions of the Constitution which regulate the character, composition, rights and obligations of the Yugoslav federation as a State community;

(b) The issue of the right to self-determination and to secession also involves a preliminary discussion of issues concerning the composition of the Socialist Federal Republic of Yugoslavia and of its internal and external borders, the regulation of internal material relations in the Socialist Federal Republic of Yugoslavia and the international position and the rights and obligations assumed by the Socialist Federal Republic of Yugoslavia as an international personality;

(c) The issue of the right of nations to self-determination, including the right to secession, must be regulated by the Constitution of the Socialist Federal Republic of Yugoslavia;

(d) The issue of the exercise of the right of nations to self-determination and to secession concerns not only one but all the nations within the Socialist Federal Republic of Yugoslavia;

(e) Authorized proponents made proposals to the Constitutional Court of the Socialist Federal Republic of Yugoslavia concerning the protection of constitutionality and legality which had been violated by the adoption of the above-mentioned acts.

21. To that effect, acting in the capacity of a body giving opinions and deciding on constitutionality and legality, and in keeping with its opinion that issues and acts related to the exercise of the right to self-determination, including the right to secession, cannot be regulated unilaterally by the assemblies of the federal units exercising that right but rather in the manner determined by the Constitution of the Socialist Federal Republic of Yugoslavia, the Constitutional Court of the Socialist Federal Republic of Yugoslavia:

(a) Issued an opinion to the effect that the provisions of item 1, indented line 3, of amendment LXVIII and of item 4, indented line 1, of amendment LXXII to the Constitution of the Socialist Republic of Slovenia are contrary to the Constitution of the Socialist Federal Republic of Yugoslavia;

(b) Passed a decree on suspending the enforcement of individual acts and measures taken pursuant to articles 4 and 10 of the Law on the Plebiscite on the Autonomy and Independence of the Republic of Slovenia, by which the bodies of the Republic of Slovenia take over the rights and obligations of the federation stipulated by the Constitution of the Socialist Federal Republic of Yugoslavia, or by which the borders of the Socialist Federal Republic of Yugoslavia, i.e. borders between republics, are unilaterally changed;

(c) Passed a decree on the revocation of articles 2, 3 and 4 of the Declaration on the Sovereignty of the State and Republic of Slovenia;

(d) Passed a decree on the abolishment of the Constitutional Decision on the Sovereignty and Independence of the Republic of Croatia.

22. None of the opinions and decrees of the Constitutional Court of Yugoslavia have been observed by the federal units.

23. Furthermore, the Constitutional Court of the Socialist Federal Republic of Yugoslavia is currently assessing the constitutionality and legality of the following regulations:

(a) The declaration on the Sovereignty of the Socialist Republic of Macedonia;

(b) Amendment XCIX to the Constitution of the Republic of Slovenia;

(c) The Constitutional Law on Amendments to the Constitutional Law for implementing Amendment XCVI to the Constitution of the Republic of Slovenia;

(d) The Resolution on the Proposal for a Negotiated Disassociation of the Socialist Federal Republic of Yugoslavia;

(e) The Law on the Plebiscite on the Autonomy and Independence of the Republic of Slovenia;

(f) Article 12 of the Constitution of the Republic of Croatia;

(g) The Constitutional Law amending the Constitutional Law for Implementing the Constitution of the Republic of Croatia;

(h) The Resolution of the Assembly of the Republic of Croatia concerning the Resolution of the Republic of Slovenia on the Negotiated Disassociation of the Socialist Federal Republic of Yugoslavia.

24. The above-mentioned situation with respect to constitutional-legal relations in the country, presented in the light of the right of nations to self-determination, very adversely reflects on the implementation of the vital functions of the system. The state of constitutional-legal chaos which resulted from the blocking of decision-making in the institutions of the system, the adoption of unilateral acts and the unreadiness and inability to observe constitutionality and legality and enforce a positive legal order is harming the country as a whole, its federal units, and especially the citizens.

25. In view of the fact that human rights are exercised in a community and that no one has the right to exercise them in a selfish, irresponsible and unrestricted manner, there is no doubt that the exercise of the right of nations to self-determination cannot be implemented unilaterally. Insistence on national rights - the right to self-determination, the right to secession, the right to autonomy - cannot be permitted to the detriment of other rights. The state of relations and the current developments in Yugoslavia point precisely to this. In spite of the fact that federal units are in formal-legal terms determined to be the subjects and guarantors of the recognized rights and freedoms of citizens, their bodies, leadership and leaders, through their acts, bring about and incite ethnic conflicts which directly threaten all the rights of citizens. In addition, federal bodies are prevented from carrying out their tasks and duties related to the implementation of their obligations in the area of the rights and freedoms of citizens, assumed under international treaties, which only further aggravates the situation.

26. If we proceed from the fact that human rights belong primarily to the individual and that tendencies towards national homogenization and identification are realized through giving preference to national rights, we can state that in Yugoslavia the other rights of citizens are restricted and not infrequently suspended in favour of a group called a nation.

27. It is impermissible to exercise a right in a manner which aggravates ethnic conflicts and which jeopardizes and brings into question other rights and freedoms, both of citizens of other and of one's own nationality. In that context, the federal Government and other authorities in Yugoslavia are faced with the task of reaching agreement on proposing such arrangements as will ensure that within the constitutional-legal arrangements in the country, the man-citizen, his freedoms and rights are placed at the centre of the economic and political system, i.e. of the social and legal State, and finding efficient instruments and guarantees for safeguarding the recognized freedoms and rights of the citizen.

2. Article 2

28. In keeping with the process of transforming and further expanding the rights and freedoms of the citizen and harmonizing them with internationally recognized standards in this area, proposed amendment LVIII to the Constitution of the Socialist Federal Republic of Yugoslavia strives to ensure the extension of the right to equal protection as compared to the previous arrangement. To that effect, item 1 of the amendment proposes the equality of citizens with respect to rights and duties irrespective of nationality, race, sex, language, confession, political or other conviction, social origin, birth, education, social status or any other personal characteristic.

29. However, the establishment of autonomous legal systems in the federal units has resulted in the adoption of various acts the arrangements of which are contrary to those in the Constitution of the Socialist Federal Republic of Yugoslavia, federal legislation and ratified international treaties. Some of the arrangements directly affect the exercise of the rights recognized by the Covenant.

30. Thus, the Government of the Republic of Croatia has passed a decision on special republican taxes levied on legal and physical persons for displaying a firm or using real estate: paragraph 1, item 1, prescribes that a special republican tax shall be paid for displaying a firm for using business space and land for rest and recreation centres, buildings and special parts of buildings seasonally or occasionally for rest or recreation; paragraph 2 stipulates that the special tax shall be paid by legal and physical persons with headquarters, i.e. residence, on the territory of the Republic of Serbia, if they have business units, building land, rest and recreation centres, buildings or special parts of buildings which are seasonally or occasionally used for rest or recreation on the territory of the Republic of Croatia.

31. It has been assessed that such arrangements are directly contrary to the assumed obligations related to guarantees for the equality of citizens envisaged by the Constitution of the Socialist Federal Republic of Yugoslavia and article 2, paragraph 1, of the Covenant.

32. In that regard, it should be pointed out that paragraph 2 of article 249 of the Constitution of the Socialist Federal Republic of Yugoslavia stipulates that every citizen of one of the republics is at the same time a citizen of

the Socialist Federal Republic of Yugoslavia, and paragraph 3 of the same article stipulates that the citizen of one republic has, on the territory of another republic, the same rights and duties as the citizens of the latter republic.

33. In keeping with the above, the Federal Executive Council has initiated proceedings for assessing the constitutionality and legality of the act in question. While this is being decided, the Constitutional Court of the Socialist Federal Republic of Yugoslavia has passed a temporary measure ordering the suspension of the enforcement of individual acts, and a decision on abolishing the decision on special republican taxes paid by legal and physical persons for displaying a firm and using real estate, which have not been respected by the bodies of the federal unit in question.

3. Article 4

34. Proceeding from the overall relations and situation in the region of Kosovo and bearing in mind the secessionist policy being pursued by the Albanian national minority on the territory of Kosovo, during the reporting period the authorities of the Socialist Federal Republic of Yugoslavia took certain measures which resulted in deviations from the obligations assumed under the Covenant. All the measures taken were in accordance with article 4 of the Covenant.

35. Thus, on 27 February 1989 the Presidency of the Socialist Federal Republic of Yugoslavia assessed that due to the deterioration of the situation in the Socialist Autonomous Province of Kosovo the social order laid down by the Constitution of the Socialist Federal Republic of Yugoslavia had been jeopardized, and thereby the integrity of the country as well. In view of the overall situation, the Presidency of the Socialist Federal Republic of Yugoslavia authorized the competent bodies to take certain special measures, depending on the situation, with a view to protecting the constitutional order, public law and order and the personal safety and property of citizens.

36. In that context, and due to riots in Kosovo on 27 and 28 March 1989 which resulted in the loss of human lives, a situation resulted constituting a general danger to the effect of article 4, paragraph 1, of the Covenant. Therefore, the competent bodies (the Executive Council, the Government of Kosovo) on 28 March took a decision temporarily prohibiting all public gatherings, as well as the movement of persons between 8.00 p.m. and 5.00 a.m. the following day.

37. The measures were a partial and temporary deviation from the provisions of articles 12 and 21 of the Covenant with a view to protecting the constitutional order and ensuring the rights, freedoms and security of all the citizens of Kosovo, irrespective of their national affiliation.

38. On 10 April 1989 the competent bodies decided to alter the measures regarding the restriction of movement specified in the decision of 28 March, and imposed a curfew between 10.30 p.m. and 5.00 a.m. the following day.

39. The decision of the Executive Council of the Government of Kosovo of 21 May revoked the restriction concerning the freedom of movement which was in force as of 10 April 1989.

40. Due to the repeated escalation of riots in Kosovo, which resulted in the loss of human lives, on the basis of a decision of the competent body of 21 February 1990, a curfew was introduced from 9.00 p.m. and 4.00 a.m. of the following day, which constituted a partial deviation from the provisions of article 12 of the Covenant. This curfew was abolished on 10 March 1990, whereby the deviation from the provisions of article 12 of the Covenant was completely discontinued.

41. The measure of prohibiting mass gatherings for the purpose of demonstrating, which constitutes a deviation from the obligations assumed under article 21 of the Covenant, passed with a view to protecting the constitutional order, the integrity of the country, public law and order, and safeguarding the rights and freedoms and the security of all the citizens of Kosovo, was rescinded by the decision of the Presidency of the Socialist Federal Republic of Yugoslavia on 18 April 1990.

42. Acting in keeping with the obligation assumed under item 3, article 4 of the Covenant, the Yugoslav side, through the Permanent Mission of the Socialist Federal Republic of Yugoslavia to the United Nations, informed the Secretary-General of the United Nations and thereby the other States parties to the Covenant of the above-mentioned measures, by its acts of 14 April 1989, 29 May 1989, 19 March 1990 and 24 April 1991.

4. Article 6

43. In view of the positive provisions concerning the institution of capital punishment and proceeding from the principle of legality and the tendency towards the further humanization of criminal legislation, the hypertrophy of this punishment in national legislation was determined. In that context, and within proposed amendment LVIII to the Constitution of the Socialist Federal Republic of Yugoslavia, item 2 proposes limiting the application of capital punishment only for the gravest forms of criminal acts perpetrated during a state of war or immediate danger of war. According to this proposal capital punishment cannot be prescribed or pronounced even for the most serious forms of grave criminal acts committed in peace or in so-called emergency situations.

44. In view of the blockade in the process of adopting the proposed amendments to the Constitution of the Socialist Federal Republic of Yugoslavia, the option of the further humanization of criminal legislation, particularly in respect of capital punishment as the most drastic punishment, is implemented through the adoption of the Law on Amendments to the Criminal Law of the Socialist Federal Republic of Yugoslavia. This Law envisages capital punishment only for premeditated criminal acts, the consequence of which is the death of a person or for specified grave criminal acts committed during war or immediate danger of war. In addition, in the area of process

legislation, the Law envisages special guarantees for trials in cases of criminal acts punishable by capital punishment, namely the number of members of the court panel has been expanded. In such cases the panel is composed of three judges and four lay assessors. The existing arrangement envisages a panel consisting of two judges and three lay assessors when criminal acts subject to a prison sentence up to 15 years or capital punishment may be pronounced.

45. Attention should also be drawn to the fact that the Assembly of the Republic of Slovenia adopted a constitutional law for implementing constitutional amendment XCVI to the Constitution of the Republic of Slovenia which, in article 2, prescribes that the provisions of the Criminal Law of the Socialist Federal Republic of Yugoslavia on capital punishment are not applicable on the territory of the Republic of Slovenia. In spite of the option to humanize criminal legislation, the question arises of harmonizing this arrangement with the international legal order.

5. Article 7

46. The draft amendment 58 to the Constitution of the Socialist Federal Republic of Yugoslavia, mentioned under point 3 above, stipulates that no one shall be subject to torture or brutal, inhuman or degrading treatment or punishment. It further prescribes that no person shall be subjected to medical or scientific experiments without his/her prior consent. This provision is intended to supplement article 179 of the Constitution of the Socialist Federal Republic of Yugoslavia which guarantees respect for the human personality and human dignity in criminal and any other proceedings where a person is deprived of his/her liberty or where his/her liberty is restricted, as well as during the serving of his/her sentence.

47. Due to the blockage of the procedure for the adoption of the constitutional amendments, the proposed provision, which complies fully with the right guaranteed under the Covenant, will be incorporated in the legal order of the Socialist Federal Republic of Yugoslavia with the ratification of the International Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which is in the final stage of adoption by the Assembly of the Socialist Federal Republic of Yugoslavia.

48. In connection with the above-mentioned right and its protection, the Criminal Code of the Socialist Federal Republic of Yugoslavia has recently been brought into line with the relevant provision of the Covenant by amendments which also envisage the criminal offence of "harassment during the performance of one's official duties". This provision stipulates that any person, while acting in his/her official capacity, who harasses another person or inflicts severe physical or mental pain, intimidates, insults or treats him/her generally in a manner which violates his/her dignity, shall be punished by imprisonment.

6. Article 9

49. With regard to this right recognized by the Covenant, a federal law has been charted in the period under review amending the Law on Criminal Procedure (LCP). The draft, which is presently under consideration pending adoption, contains provisions regulating in a new way the powers of the law enforcement agencies. These amendments to the LCP prescribe that police officers shall be obliged immediately to refer persons deprived of their liberty to the investigating judge and may keep them in detention only exceptionally. Detention may be ordered only when there are grounds to believe that a person has committed a criminal offence for which he/she is prosecuted in his/her official capacity and when one of the so-called "material-legal" requirements for detention has been met. Detention may last for no longer than 48 hours. After this, the police officer is obliged to refer the detainee to the investigating judge or to release him/her without any further delay. Detention is to be ordered by a written decision which can be challenged by an appeal to the investigating judge who decides on the matter immediately, while having the grounds for detention checked every 12 hours. An alternative solution envisages the deletion of article 196 of the LCP which gives the police officer the right to decide on detention matters.

7. Article 17

50. Point 7 of draft amendment 58 to the Constitution of the Socialist Federal Republic of Yugoslavia provides for more comprehensive protection of personal data as important elements of a person's privacy. This provision envisages the collection, processing and use of personal data only as prescribed by law but does not exclude the possibility of the collection and use of particular personal data on the basis of a person's approval or on the basis of a general enactment which must be in line with the law.

51. The proposed provisions are of great importance given the increasing use of state-of-the-art information systems and databases. In order to prevent possible abuses of personal data, they envisage an explicit constitutional ban on the use thereof for purposes other than those associated with data collection.

52. The proposed modifications are designed to provide for a more comprehensive protection of the individual's moral integrity and compliance with the standards and present-day trends in international conventions on human rights. They are also designed to ensure more effective safeguarding of individual civil rights.

53. It is further envisaged that "surveillance and tapping of telephone and other conversations" may be ordered, as part of the investigation, by the investigating judge only and provided there are grounds to believe in a person's involvement in the commission of a particular criminal offence. In such an event, the investigating judge is obliged to issue a written order

with an explanatory note giving particulars about the person against whom the action under question is to be taken, as well as the manner, scope and time-frame of the measures which depart from the principles of protection of an individual's privacy. The measures may last for no more than three months, and may for reasons of exceptional importance be extended for up to three additional months. To prevent possible abuses in case the data are of no relevance for the conduct of criminal proceedings, they are to be destroyed under the supervision of the investigating judge. A special process penalty is also provided for; the findings of this investigative operation will not be accepted as evidence in court if the procedure was not conducted in the prescribed manner. Only the recordings obtained in the manner prescribed by law shall be deemed acceptable evidence, and any other shall fall under the regime of legally invalid evidence which has to be removed from the records on the case and on which no court decision may be based.

8. Article 18

54. On the basis of positive national legislation, item 6 of amendment 58 to the Constitution of the Socialist Federal Republic of Yugoslavia guarantees the freedom of conscience and confession and defines the constitutional-legal status of religious communities and organizations.

55. Unlike the valid constitutional provisions set forth in article 174 of the Constitution of the Socialist Federal Republic of Yugoslavia, which stipulates that the right to practise a faith shall be free and a person's private affair, the proposed provision lays down, in line with international standards, a universal rule governing the freedom of confession and introduces a new constitutional rule in regard to the freedom of conscience.

9. Article 19

56. The position on the right to express one's opinions freely has been revised in line with the reform processes and the democratization of society. This is evidenced by the passing of a law amending the Criminal Code of the Socialist Federal Republic of Yugoslavia so that the provisions on so-called "political criminal offences" have been radically altered and the so-called "verbal commission" abolished. In this connection, special mention needs to be made of the following modifications:

(a) The criminal offence of counter-revolutionary violation of the social order under article 114 of the Criminal Code of the Socialist Federal Republic of Yugoslavia assumes, upon revision, the features of the classical criminal offence of high treason which is well known in all present-day criminal codes. This offence has been renamed "an assault on the constitutional order" and a prison sentence of at least five years is prescribed for any attempt to change by use of force or by any other violent means the State and social order of the Socialist Federal Republic of Yugoslavia laid down by the Constitution of the Socialist Federal Republic

of Yugoslavia or to overthrow the highest State bodies, their executive agencies or the representatives thereof;

(b) The justly criticized sanctioning of the criminal offence of hostile propaganda under article 133 of the Criminal Code of the Socialist Federal Republic of Yugoslavia has undergone substantive changes. The offence has been renamed "instigation of violent change of the constitutional order". For the basic form of this offence a prison sentence of three months to five years has been prescribed and shall be pronounced against any person who, in attempting to undermine the constitutional order or security of the Socialist Federal Republic of Yugoslavia, calls upon or incites another person to change by use of force the State and social order of the Socialist Federal Republic of Yugoslavia laid down by the Constitution, to overthrow the highest organs of authority, their executive agencies or their representatives. The offence acquires graver form if foreign assistance is involved and calls for prison terms of one to eight years, while special forms include referral or transfer of material necessary for the commission of the offence to the territory of the Socialist Federal Republic of Yugoslavia (punishable by a prison sentence lasting from three months to three years) and development, reproduction or holding of such material with the intent of distribution (subject to a prison term of up to three years). The proposed sanctions duly apply the principles contained in article 19 of the Covenant under which criminal-legal repression shall not infringe upon the freedom of thought and expression;

(c) The criminal offence of damage to the reputation of the Socialist Federal Republic of Yugoslavia under article 157 of the Criminal Code of the Socialist Federal Republic of Yugoslavia specifies that the damage has to have been done in public, meaning that it excludes any insults or slanders. The list of persons protected by this provision includes the President and the members of the Presidency of the Socialist Federal Republic of Yugoslavia, the President of the Assembly of the Socialist Federal Republic of Yugoslavia and the President of the Federal Executive Council who enjoy this protection only when acting in their official capacity.

57. The immediate consequence of the changes in the sanctions under the Criminal Code of the Socialist Federal Republic of Yugoslavia was the adoption of the Law on Amnesty which stipulates the exemption from prosecution and full or partial exemption from the execution of a sentence of persons who have committed the criminal offence of hostile propaganda under article 133, paragraph 1, of the Criminal Code of the Socialist Federal Republic of Yugoslavia prior to the date of entry into force of the Law on Amnesty. The Law exempts from amnesty persons who have committed the above-mentioned criminal offence combined with one of the criminal offences against the foundations of the social order and the security of the Socialist Federal Republic of Yugoslavia as per chapter 15 of the Criminal Code of the Socialist Federal Republic of Yugoslavia. According to the data obtained by the competent authorities, on 28 March 1990 two persons were serving prison terms for this offence while three persons were serving time for this and other so-called "political offences".

58. Persons sentenced for hostile propaganda under article 133 of the Criminal Code of the Socialist Federal Republic of Yugoslavia were included in the group which were pardoned by the Presidency of the Socialist Federal Republic of Yugoslavia and which numbered 41 persons in 1988 and 17 persons in 1989.

10. Article 22

59. In line with the reforms, and with a view to ensuring overall democratization and development of political pluralism, point B of the proposed amendment 58 to the Constitution of the Socialist Federal Republic of Yugoslavia explicitly guarantees the freedom of political organization and action. This right, in accordance with the proposal in the amendment, may be limited only if exercised to the detriment of the vital values which are the cornerstones of any present-day society: the constitutional order, territorial integrity and independence of the country, guaranteed freedoms and human rights, national, racial and religious coexistence and tolerance. This brings the rules governing this right more into line with the provisions of the Covenant.

60. In the period under review all federal units and the federation passed respective laws 1/ regulating the issues of political organization and association. Under these laws and by-laws the competent authorities have registered 292 political organizations at the following levels: Socialist Federal Republic of Yugoslavia, 46; Bosnia-Herzegovina, 44; Macedonia, 27; Slovenia, 51; Serbia, 58; Croatia, 42 and Montenegro, 24.

61. The above laws 1/ or special laws 2/ on association into citizens' associations and social organizations also govern the issues pertaining to trade union organization.

11. Article 24

62. Apart from the provisions in the positive legal order which refer to the protection of the child, Yugoslavia has also ratified the 1989 Convention on the Right of the Child. In this way legal protection of the child has been incorporated into the legal order of the country which is fully in line with the internationally attained standards.

12. Article 25

63. It should be pointed out that the rights contained in this article have also been affected by the process of reform of overall social relations in Yugoslavia. The changes in the economic and political system of Yugoslavia have also made possible a change in the position of the citizen as an individual, i.e. of political organizations of citizens in the process of constituting bodies of power, which necessitated the creation of prerequisites for direct, secret and democratic elections. In that context, the amendments

to the Constitution of the Socialist Federal Republic of Yugoslavia proposed certain arrangements which were not accepted due to the previously mentioned blockade.

64. However, all the republics, in the framework of changing the constitutions of the federal units and independently from arrangements in the Constitution of the Socialist Federal Republic of Yugoslavia, created a basis for free, direct, multiparty democratic elections. On that basis they adopted election laws and carried out elections for republican assemblies.

65. In this regard, a problem arises in connection with the fact that the process of constituting multiparty assemblies at State level has not been completed. It has not been made possible for the composition of the federal assembly to be an expression of free and direct multiparty elections.

66. The constitution of a multiparty system at all levels would represent not only a completion of the process of constituting multiparty assemblies (as an expression of the commitment to develop a modern democratic political system) but also an opportunity to ensure a mechanism the role of which would be reflected in the process of finding optimum solutions, acceptable to all, with regard to the situation in Yugoslavia. Therefore, insistence on ensuring for all the right to participate in the conduct of public affairs creates the possibility for legally and democratically finding and definitively articulating interests and arrangements with regard to ensuring freedoms and rights for all the citizens of Yugoslavia.

67. In connection with rights related to participation in the system of power, attention is drawn to the fact that in July 1990, the Assembly of the Socialist Republic of Serbia adopted the Law on the Suspension of the Work of the Assembly of the Socialist Autonomous Province of Kosovo and of the Executive Council of the Assembly of the Socialist Autonomous Province of Kosovo. The Law was challenged by some and pointed to as an act having direct negative consequences vis-à-vis the right of representatives of Albanian nationality to participate in power in keeping with positive regulations.

68. In that connection it is pointed out that it is immanent to the logic of any system, even a constitutional-legal one, to ensure conditions and prerequisites which enable its reproduction (i.e. existence), efficient protection and successful operation. This logic represents the creation of instruments, by all means based on positive law, which can eliminate those parts of the system which endanger it or prevent its functioning.

69. In addition, the Assembly of the Socialist Republic of Serbia determined that the Assembly of the Socialist Autonomous Province of Kosovo had over a protracted period of time been passing decisions contrary to the interests of the nationalities in the Socialist Republic of Serbia, and that some of its delegates had attempted to proclaim the Socialist Autonomous Province of Kosovo an independent unit of the federation, attempts which endangered the sovereignty, territorial integrity and constitutional order of the Socialist Republic of Serbia. It was also determined that it was the

constitutional-legal obligation of the Socialist Republic of Serbia to formulate and pass measures to protect the endangered values, and the Law mentioned above was adopted to that end.

70. With respect to the adoption of that Law, the Presidency of the Socialist Federal Republic of Yugoslavia in July 1990 determined that the Law was in conformity with the Constitution of the Socialist Federal Republic of Yugoslavia. This assessment was based on the fact that in the situation which had arisen, it was primarily the bodies of the Socialist Republic of Serbia that had to take appropriate measures to protect the constitutional order and integrity of the Socialist Republic of Serbia, and thereby also of Yugoslavia.

71. It should be pointed out that the Assembly of the Republic of Slovenia initiated proceedings before the Constitutional Court of Yugoslavia to determine the constitutionality of the mentioned Law.

72. It should also be pointed out that the delegates to the Federal Chamber of the Assembly of the Socialist Federal Republic of Yugoslavia and the members of the Presidency of the Socialist Federal Republic of Yugoslavia, in keeping with the Constitution of the Socialist Federal Republic of Yugoslavia, continued to represent, i.e. take account in their work and decision-making, the interests of the Albanian national minority; that conditions were created by the bodies of the Republic of Serbia for the Albanian national minority, as well as for all other citizens, to take part in the free, secret and multiparty elections, which a large majority of them boycotted; and that all efforts on the part of the bodies of the Republic of Serbia to ensure, within the positive constitutional-legal order of the Republic, that elections in the territory of Kosovo were carried out, with a view to electing representatives to take part in the work of the institutions of the system of power, were boycotted by the Albanian national minority.

III

73. In formal and legal terms, the international-legal protection of human rights in the Socialist Federal Republic of Yugoslavia is solidly based. However, it is noticeable that in that system, the Socialist Federal Republic of Yugoslavia lacks an international mechanism for direct protection and control on the part of an international body specially established for that purpose.

74. International law today constantly narrows down the area of State sovereignty in favour of protecting general interests, through the gradual expansion of international competences to ever new areas of social relations and through the gradual assertion of international organizations, nations and individuals as factors of international law. In addition, it is today indisputable, in theory, practice and the judicature, within the international community, that all States are obliged, without reservations, to carry out their international obligations and that, in case of disputes, they cannot invoke their internal law as an obstacle to carrying out their international obligations.

75. Aware of the need to incorporate and apply international standards in the protection of human rights, i.e. to ensure them to the greatest possible extent and to ensure international control over rights recognized by the Covenant for the above-mentioned factors, as well as the application of the provisions of the Covenant stipulating those rights, the Yugoslav Government reviewed the institution of "receiving and considering statements by the Committee in which a member State claims that another member State is not fulfilling its obligations under the Covenant" and of "receiving and considering statements from individuals coming under its jurisdiction, who claim to be victims of violation, on the part of that State, of any right stipulated in the Covenant".

76. In view of the above and the objective interest to ensure within Yugoslavia, through the unreserved acceptance of all instruments of international law, a better level of protection of human rights, the Yugoslav Government proposed some arrangements. Thus, in 1991 the Government of Yugoslavia submitted to the federal Parliament a proposal that Yugoslavia should issue a statement to the effect that it accepts the jurisdiction of the Committee in keeping with article 41 of the Covenant and should ratify the Optional Protocol concerning the International Covenant on Civil and Political Rights, signed by Yugoslavia on 14 March 1990.

77. In respect of international control, it should be borne in mind that the Socialist Federal Republic of Yugoslavia, as a matter of practice, answers questions in the area of human rights from different non-governmental organizations, groups and bodies, and allows them direct insight into the state of these rights in the country. During the past two years Yugoslavia was visited by Amnesty International, the International Helsinki Federation for Human Rights, the International Committee of the Red Cross and other non-governmental organizations.

IV

78. During the reporting period, Yugoslavia, in keeping with its earlier practice, continued and in a regular and timely manner to ratify virtually all the most important agreements and conventions through which the international community further developed and built up the system of protection of human rights. Also, thanks to the prejudice that human rights in Yugoslavia had been regulated, and by the introduction of "self-management in the area of decision-making in institutions of power and by the elimination of exploitation at the economic level" even expanded, the conviction existed that there was no need for harmonization with international standards.

79. A characteristic of that period was the strong influence of ideological prejudices, particularly in facing criticism in connection with human rights coming from the West, from countries of opposite ideological convictions, which was reflected in communications with members of the international community regarding issues concerning the protection and control of recognized rights.

80. Of late, and intensively since 1978, within the overall reform being carried out in Yugoslavia, the Government also initiated reforms in the area of human rights. As shown by the above, the main thrust of the reform is man, his rights and freedoms placed at the centre of the economic and political system, i.e. of the social and legal State. The reform aims at reformulating and strengthening personal rights of man and the citizen, especially against the unlimited power and coercion of the State, political freedom on the basis of pluralistic democracy and economic rights through the restructuring of the economy, changes of ownership relations and entrepreneurship. These efforts were operationalized through amendments to the positive legal order and the adoption of new regulations aimed at ensuring a new status of the individual in society.

81. Regrettably, in spite of the increasingly favourable normative and legal framework and efforts to comply with and attain all international standards (in the areas of application, protection, supervision), the state of human rights and freedoms on the territory of Yugoslavia is worsening. The main reasons for such a state of affairs lie in vehement nationalistic unrest, unleashed by the processes of political pluralism. These processes are attended by tendencies of a separatist, hegemonist and totalitarian nature.

82. The protection of human rights and freedoms has been brought into question due to the behaviour of republics based on an unclear concept of the set-up of the country; disregard and bypassing of the legal order and legal institutions of the system and the adoption of unilateral and secessionist acts, thereby completely disregarding the international obligations of the Socialist Federal Republic of Yugoslavia which assumed those obligations as an international personality and which features as their guarantor. In those processes there have been flagrant violations of basic human rights, and during the armed conflicts also violations of humanitarian law.

83. In this regard, the following violations of rights have been identified so far: violation of the rights to life, physical integrity (through cruelty, maiming, torture) and freedom of movement; the pronouncement and execution of sentences without a previous procedure by a regular court or the ensuring of all other judicial guarantees; and the suspension of all other rights in regions which are the sites of conflict.

84. In view of the fact that conflicts are in process and that at the moment the relevant data cannot be obtained from all the republics, it is not possible to submit more comprehensive data on the types, degree and number of violations of recognized rights.

85. With a view to overcoming the conflicts in Yugoslavia, i.e. eliminating their causes, the legal bodies of the federal States have so far, in their activities, insisted:

(a) On the international-legal personality of Yugoslavia;

(b) On the equalization of the legal systems being developed in the republics and their unification within the legal system of Yugoslavia, especially with respect to human rights;

(c) That the principle of exclusivity, on which republics are developed as States on collective interests, be abandoned and that man and the citizen be placed at the centre of the political and economic system, of the social and legal State;

(d) On ensuring the observance of the human rights of parts of nations and members of national minorities living on the territories of republics, i.e. of their supervision by the international community in keeping with positive international acts, and on preventing the reduction of rights acquired and recognized so far;

(e) That citizens, nations and national minorities respect the legal order and institutions of the system of the State in which they live, i.e. not express disloyalty to the State regime in the form of disloyalty to State entity;

(f) That the exercise of all recognized judicial rights be done in keeping with internationally accepted standards with respect to their restriction.

Notes

1/ The Law on the association of citizens into associations, social organizations and political organizations being established in the territory of the Socialist Federal Republic of Yugoslavia (July 1990), the Law on the association of citizens (Bosnia and Herzegovina, February 1990); the Law on social organizations and citizens' associations (Macedonia, April 1990); the Law on political association (Slovenia, December 1989); the Law on political organizations (Serbia, July 1990); the Law on political organizations (Croatia, May 1990); and the Law on the association of citizens (Montenegro, July 1990).

2/ The Law on societies (Slovenia, December 1974), the Law on social organizations and citizens' associations (Serbia, April 1982), the Law on social organizations and citizens' associations (Croatia, 1990).